

C-8353

SUPREME COURT OF TEXAS CASES

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. U. KIRBY,
WILLIAM, ET AL. (3RD DISTRICT)

815
1988-89

C-8353
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. U.
WILLIAM, ET AL. (3RD DISTRICT)

KIRBY,

015
1988-89



warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex. 1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex. 1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex. 1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. Local control does not mean control over the formation or financing of school districts. These are State functions, for school districts are "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas school finance system. First, Article VII, Section 1, of the Constitution commands the

Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that "a thorough and efficient system be provided ... so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. The findings reveal the vast disparity in property wealth (Tr. 548-49), tax burden (Tr. 553-55), and expenditures (Tr. 551-60); the failure of state allotments to cover the real cost of education (Tr. 565-68); and the denial of equal educational opportunity to many Texas school children (Tr. 601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aikin Committee Report of 1948; and the Governor's Committee on Public Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature

to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE TEXAS MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op. 13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. Art. VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op. 15).

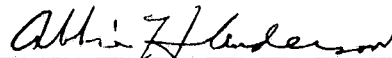
State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble in meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution. In addition, the disparate burdens imposed by the State fly in the face of the constitutional mandate that taxation "shall be equal and uniform." Tex., Const. Art. VIII, §1.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr. 592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgement of the court of appeals and affirm the judgement of the trial court. We must no longer tolerate an educational system that perpetuates such inequity.

Respectfully submitted,

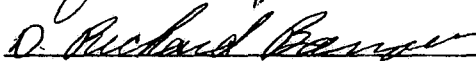
TERRELL INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES



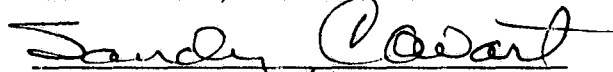
Col. Abbie Anderson, President




Elizabeth Jones, Vice President



Richard Barrow, Board Member



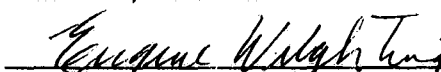
Sandy Cowart, Board Member



W.E. Bill Griffin, Board Member



Tom Snow, Board Member



Eugene Wrighting, Board Member

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 2nd day of May, 1989, by United States Mail, postage prepaid to all counsel of record.

Sandra R. Nicolas

Sandra R. Nicolas

State Bar Number 15016500

ARNOLD AND NICOLAS

800 One Capitol Square

300 West Fifteenth Street

Austin, Texas 78701

512-320-5200

C 8353

RECEIVED
IN SUPREME COURT
OF TEXAS

NO. C-8353

MAY 3 1980

MARY AL. WAKEFIELD, Clerk

IN THE

By _____ Deputy SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, City of Friendswood, file this Brief in Support of Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.



City of Friendswood

109 WILLOWICK 713/482-3323
FRIENDSWOOD, TEXAS 77546-3898

PAUL W. SCHRADER
Mayor

Councilmen
RON RITTER
ROBERT WICKLANDER
EVELYN NEWMAN
PHYLLIS J. LEE
JAN JORDAN
JOE PRIHODA

ANNETTE A. BRAND
City Manager
DELORIS MCKENZIE, CMC
City Secretary

April 3, 1989

To The Supreme Court of Texas:

We pride ourselves as Americans and as Texans because we live in the land of opportunity. Educational opportunity must be of prime importance. It is essential to the future success of our country and our state that the opportunity for equal education extend to every child.

A student's educational opportunities should not be determined by where he or she was born or where his or her parents happen to live. Friendswood citizens are proud of their schools, administration, faculty and students. We all work hard to assure that each student is given the maximum opportunity and encouragement with the ability of our resources.

The City of Friendswood is one of four cities in the state with no industrial tax base. The citizens of Friendswood currently have the sixth highest tax burden in the state. These factors discourage growth and economic development which in turn leads to higher tax rates.

We respectfully request that the Texas Supreme Court hear the Edgewood ISD v. William Kirby case as soon as possible.

We further request that the court rule that substantially equal educational opportunity is the law in the State of Texas.

We authorize an attorney selected by the Equity Center to incorporate this statement in an amicus curiae brief on our behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Paul W. Schrader
Mayor
City of Friendswood

PWS/jt

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OF TEXAS

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MAY 3 1989

MARY M. WAKEFIELD, Clerk

By _____ Deputy IN THE

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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Sincerely,

Paul W. Schrader
Mayor
City of Friendswood

PWS/jt

RECEIVED
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OF TEXAS

NO. C-8353

JUN 19 1989

C 8353

JOHN L. ADAMS, Clerk

Deputy

IN THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS AND
PETITIONER-INTERVENORS BY THE
WEDNESDAY STUDY GROUP
OF SANGER, TEXAS

NO. C-8353

IN THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS AND
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NO. C-8353

IN THE
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AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,
Petitioners

V.

WILLIAM KIRBY, ET AL.,
Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND
PETITIONER-INTERVENORS BY THE
WEDNESDAY STUDY GROUP SANGER, TEXAS

TO THE HONORABLE SUPREME COURT OF TEXAS:

Now come the Wednesday Study Group from Sanger, Texas and submit the following statements in support of the ruling of the Honorable Harley Clark, Judge - 250th Judicial District, Travis County, in Cause Number 362,516.

The undersigned has been requested to submit these statements to the Court. The undersigned does not represent any party and has no monetary interest in the outcome of the litigation. The statements presented are from individuals who have a substantial interest in preserving the State's ability to provide equitable public education to its citizens.

Accordingly, the Wednesday Study Group from Sanger, Texas respectfully pray that this Court consider the attached statements and uphold the decision of the trial court in the case at bar.

Respectfully submitted,
ARNOLD AND NICOLAS
800 One Capitol Square
300 West Fifteenth Street
Austin, Texas 78701
512-320-5200

by Sandra R. Nicolas
Sandra R. Nicolas
State Bar No. 15016500

STATEMENT OF AMICUS CURIAE, *Helen Bounds*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

A student's educational opportunities should not be determined by where he or she happens to be born or where his or her parents happen to live.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Helen S. Bounds

P.O. Box 52

Sanger, TX 76266

PLEASE NOTE:

The following statements are essentially identical to the first statement bound in this volume.

STATEMENT OF AMICUS CURIAE, *Bertha Johnson*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

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Sincerely,

Bertha Johnson.

STATEMENT OF AMICUS CURIAE, *Ann Barton*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

Our schools have had roofs that leak, low salaries from the custodians to the superintendent, lack of equipment, etc., and high taxes for years. Our tax rate was \$1.20 per hundred back when \$0.50 and \$0.60 rates were considered high.

More money is needed now for the low value districts to meet the challenge of educational reform; further delays will do irreparable damage.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Thank you,

Ann M. Barton
807 N. 7th St.
P.O. Box 361
Sanger, TX 76266

STATEMENT OF AMICUS CURIAE, *Joyce Webb*

I cannot understand why if the Governor, Lt. Governor, Speaker of the House, Chairpersons of the House and Senate Education Committees, the State Board of Education, the Commissioner of Education, etc., all say that the current system of distribution of state funds to public schools is inequitable - why something cannot be done.

We lose good teachers to nearby higher-paying school districts, we have a tax rate that discourages economic growth and development, and we cannot understand why the legislature and governor will do nothing even close to equity about it.

I urge you to hear and support Edgewood v. Kirby.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Thank you,

Joyce Webb

STATEMENT OF AMICUS CURIAE, *Sherry Muir*

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Sincerely,

Sherry Muir
Taxpayer

STATEMENT OF AMICUS CURIAE, *Susan R Porter*

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Sincerely,

Susan R Porter

Taxpayer

STATEMENT OF AMICUS CURIAE, *Betty Cunningham*

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Thank you,

Betty Cunningham

STATEMENT OF AMICUS CURIAE, *Nelva Higgo*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

Our schools have had roofs that leak, low salaries from the custodians to the superintendent, lack of equipment, etc., and high taxes for years. Our tax rate was \$1.20 per hundred back when \$0.50 and \$0.80 rates were considered high.

More money is needed now for the low value districts to meet the challenge of educational reform; further delays will do irreparable damage.

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Thank you,

Nelva Higgo
Spring, Texas
76266

STATEMENT OF AMICUS CURIAE, *Margaret Rice*

I cannot understand why if the Governor, Lt. Governor, Speaker of the House, Chairpersons of the House and Senate Education Committees, the State Board of Education, the Commissioner of Education, etc., all say that the current system of distribution of state funds to public schools is inequitable - why something cannot be done.

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I urge you to hear and support Edgewood v. Kirby.

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Thank you,

Margaret Rice

STATEMENT OF AMICUS CURIAE, *Francile Sullivan*

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Thank you,

Francile Sullivan
Brf 915
Danger, Tx. 76266

STATEMENT OF AMICUS CURIAE, *Norma Echols*

I cannot understand why if the Governor, Lt. Governor, Speaker of the House, Chairpersons of the House and Senate Education Committees, the State Board of Education, the Commissioner of Education, etc., all say that the current system of distribution of state funds to public schools is inequitable - why something cannot be done.

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Thank you,

Norma L. Echols
Retired Teacher

STATEMENT OF AMICUS CURIAE, *Lillie Malone*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

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Thank you,

Lillie Malone

STATEMENT OF AMICUS CURIAE, *Ruth Marshall*

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Thank you,

Ruth Marshall

STATEMENT OF AMICUS CURIAE, *Bettie Atcheson*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

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Thank you,

Bettie Atcheson

STATEMENT OF AMICUS CURIAE, *Dorothy Dimitt*

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Thank you,

Dorothy Dimitt

STATEMENT OF AMICUS CURIAE, *Lillie Belle Horst*

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Thank you,

Lillie Belle Horst

STATEMENT OF AMICUS CURIAE, *Sue Cook*

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Thank you,

Mrs Sue Cook

STATEMENT OF AMICUS CURIAE, *Opal Vaughn*

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Thank you,

Mrs. Opal Vaughn

STATEMENT OF AMICUS CURIAE, *Eunice Gray*

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Thank you,

*Sincerely yours,
Eunice D. Gray
808 N. 6th
Sanger, Texas #266*

STATEMENT OF AMICUS CURIAE, *Jack L Walker*

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Thank you,

Jack L Walker

STATEMENT OF AMICUS CURIAE, *Lois Walker*

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Thank you,

Lois Walker
Rt I Box 331 m
Sanger, Tex 76266

STATEMENT OF AMICUS CURIAE, *Non Anderson*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

A student's educational opportunities should not be determined by where he or she happens to be born or where his or her parents happen to live.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Non Anderson
Box 528
Sanger TX 76266

STATEMENT OF AMICUS CURIAE, *Norma Odum*

I cannot understand why if the Governor, Lt. Governor, Speaker of the House, Chairpersons of the House and Senate Education Committees, the State Board of Education, the Commissioner of Education, etc., all say that the current system of distribution of state funds to public schools is inequitable - why something cannot be done.

We lose good teachers to nearby higher-paying school districts, we have a tax rate that discourages economic growth and development, and we cannot understand why the legislature and governor will do nothing even close to equity about it.

I urge you to hear and support Edgewood v. Kirby.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Thank you,

Norma Odum
Brief 186
Largo, TX

STATEMENT OF AMICUS CURIAE, *Karen Jones*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

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I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Karen Jones
Taxpayer
Box 122
Sanger TX 76266

STATEMENT OF AMICUS CURIAE, *Darlis Anthony*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

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I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Darlis Anthony
Rt. 1, Box 623
Sanger, Tx. 76266

STATEMENT OF AMICUS CURIAE, *Beverly Dobias*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

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I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Beverly Dobias
307 Bob White Way

STATEMENT OF AMICUS CURIAE, *Jo Davis*

I am writing to request that you hear the Edgewood v. Kirby suit on behalf of the school districts in Texas with low property values per student.

Sanger ISD has the second highest tax rate out of the eleven schools in Denton County, and at the same time, Sanger has the second lowest value per student in Denton County - this is no coincidence. As a result, our school does not have adequate funds to meet state mandates, provide adequate science labs, etc.

A student's educational opportunities should not be determined by where he or she happens to be born or where his or her parents happen to live.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Sincerely,

Jo Davis
638 Dyer Road
Sanger, Texas 76266

STATEMENT OF AMICUS CURIAE, *E. Mark Bulger*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

Our schools have had roofs that leak, low salaries from the custodians to the superintendent, lack of equipment, etc., and high taxes for years. Our tax rate was \$1.20 per hundred back when \$0.50 and \$0.80 rates were considered high.

More money is needed now for the low value districts to meet the challenge of educational reform; further delays will do irreparable damage.

I authorize an attorney selected by the Equity Center to incorporate this statement as an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Thank you,

E. Mark Bulger

STATEMENT OF AMICUS CURIAE, *Renee Bulger*

I am vitally concerned about public education in Texas and about the failure of the Legislature and Governor to support an equitable method for the distribution of state funds in Texas.

Our schools have had roofs that leak, low salaries from the custodians to the superintendent, lack of equipment, etc., and high taxes for years. Our tax rate was \$1.20 per hundred back when \$0.50 and \$0.80 rates were considered high.

More money is needed now for the low value districts to meet the challenge of educational reform; further delays will do irreparable damage.

I authorize an attorney selected by the Equity Center to incorporate this statement as an amicus brief on my behalf supporting Petitioners and Petitioner-Intervenors in the Edgewood case.

Thank you,

Renee G. Bulger

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 19th day of June, 1989, by United States Mail, postage prepaid to all counsel of record.

Sandra R. Nicolas

Sandra R. Nicolas
State Bar Number 15016500

ARNOLD AND NICOLAS
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RECEIVED
IN SUPREME COURT
OF TEXAS

NO. C-8353

JUN 19 1989

CLERK, SUPREME COURT

C 8353

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF
PETITIONERS' AND PETITIONER-INTERVENORS'

TULIA INDEPENDENT SCHOOL DISTRICT
702 NW 8th Street
Tulia, Texas 79088

NO. C-8353

IN THE
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Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, Tulia Independent School District, file this Brief in Support of Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION
AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgement of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The undersigned are officials of school districts in Texas and others concerned with the quality of public education in this State. Our interest is in the education of the children of Texas.

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict well the gross inequity of the Texas school finance system. It is these inequities and disparities that we, like all school districts of limited taxable wealth, confront and combat on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr. 548-50).¹ The Texas school finance system relies heavily on local district taxation. (Tr. 548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr. 555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of trial court. For example, the wealthiest school district in Texas has more than \$14,000,000 of property wealth per student, while the poorest district has approximately \$20,000 of property wealth per student, a ratio of 700 to 1. (Tr. 548). The range of local tax rates in 1985-86 was from \$.09 (wealthy district) to \$1.55 (poor district) per \$100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures

¹The Transcript is cited as "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

per student in 1985-86 was from \$2,112 per student (poor district) to \$19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr. 559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greatest educational needs are heavily concentrated in the State's poorest districts." (Tr. 562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr. 563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionally infirm.

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op. 3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex. 1985). Recognizing that education is "essential to the preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. See, e.g., Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J.104, 106 (Dec. 7, 1988). Article I, Section 3 guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education

provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., Art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aikin Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H.C.Res. 48, 50th Leg. (1948). Moreover, Section 16.001 of the Texas Education Code, enacted in 1979, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors." Two courts have concluded that Article VII, Section I's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex. 1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right

guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal. Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of Appeals in its suspect classification analysis. (Diss.Op. 9-10). The Rodriguez Court observed: "there is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr. 563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.. 1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex. 1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex. 1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a

statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation or financing of school districts. These are State functions, for school districts are "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas school finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that "a thorough and efficient system be provided ... so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of

the system. The findings reveal the vast disparity in property wealth (Tr. 548-49), tax burden (Tr. 553-55), and expenditures (Tr. 551-60); the failure of state allotments to cover the real cost of education (Tr. 565-68); and the denial of equal educational opportunity to many Texas school children (Tr. 601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aikin Committee Report of 1948; and the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in

exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op. 13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. Art. VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op. 15).

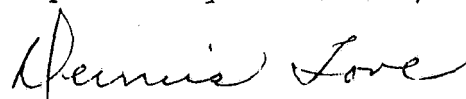
State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble

meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution. In addition, the disparate burdens imposed by the State fly in the face of the constitutional mandate that taxation "shall be equal and uniform." Tex.Const. Art. VIII, §1.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr. 592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgement of the court of appeals and affirm the judgement of the trial court. We must no longer tolerate an educational system that perpetuates such inequity.

Respectfully submitted,



President, Board of Trustees
Tulia Independent School District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 19th day of June, 1989, by United States Mail, postage prepaid to all counsel of record.

Sandra R. Nicolas

Sandra R. Nicolas
State Bar Number 15016500

ARNOLD AND NICOLAS
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WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS AND
PETITIONER-INTERVENORS BY
BUSINESS LEADERS, CIVIC LEADER AND TAXPAYERS OF CUERO, TEXAS

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BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND
PETITIONER-INTERVENORS BY
BUSINESS LEADERS, CIVIC LEADER AND TAX PAYERS OF CUERO, TEXAS
TO THE HONORABLE SUPREME COURT OF TEXAS:

Now come the Business Leaders, Civic Leader and Taxpayers of Cuero, Texas and submit the following statements in support of the ruling of the Honorable Harley Clark, Judge - 250th Judicial District, Travis County, in Cause Number 362,516.

The undersigned has been requested to submit these statements to the Court. The undersigned does not represent any party and has no monetary interest in the outcome of the litigation. The statements presented are from individuals who have a substantial interest in preserving the State's

ability to provide equitable public education to its citizens.

Accordingly, the Business Leaders, Civic Leader and Taxpayers from Cuero, Texas respectfully pray that this Court consider the attached statements and uphold the decision of the trial court in the case at bar.

Respectfully submitted,
ARNOLD AND NICOLAS
800 One Capitol Square
300 West Fifteenth Street
Austin, Texas 78701
512-320-5200

by Sandra R. Nicolas
Sandra R. Nicolas
State Bar No. 15016500



Farmers State Bank & Trust Company

William A. Blackwell
President

STATEMENT OF AMICUS CURIAE (FARMERS STATE BANK & TRUST)

On behalf of Farmers State Bank, I urge the Supreme Court to hear the Edgewood Independent School District Case in support of the Plaintiffs and Plaintiff Intervenors.


DeWitt County has lost and continues to lose its oil and gas production, thereby hurting the Cuero Independent School District's tax revenue. This is especially detrimental, since the school district is a property poor district.

Due to the lack of income, we cannot offer:

1. The advance science/math/language courses that are needed.
2. We have insufficient space and limited funds for repairs and maintenance, no rooms for special activities, and no funds for a much needed auditorium.
3. Loss of good teachers to higher-paying districts.
4. Limited specialized personnel; counselors, staff training specialists, etc.
5. Less money to spend, in spite of a higher property tax rate than in wealthier districts in the state.
6. The property tax rate so high it discourages economic growth and development.
7. More money is needed now; further delays will do irreparable damage.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf, supporting Petitioners and Petitioner Intervenors in the Edgewood Case.

Respectfully submitted,


William A. Blackwell, President
Farmers State Bank & Trust

Farmers State Bank & Trust Company

Janet Smith
Vice President

STATEMENT OF AMICUS CURIAE (FARMERS STATE BANK & TRUST)

I urge the Supreme Court to hear the Edgewood Independent School District Case in support of the Plaintiffs and Plaintiff Intervenors.

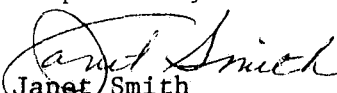
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1. The advance science/math/language courses that are needed.
2. We have insufficient space and limited funds for repairs and maintenance, no rooms for special activities, and no funds for a much needed auditorium.
3. Loss of good teachers to higher-paying districts.
4. Limited specialized personnel: counselors, staff training specialists, etc.
5. Less money to spend, in spite of a higher property tax rate than in wealthier districts in the state.
6. The property tax rate so high it discourages economic growth and development.
7. More money is needed now; further delays will do irreparable damage.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Respectfully submitted,


Janet Smith
Vice President

JS/bf


STATEMENT OF AMICUS CURIAE (CUERO CHAMBER OF COMMERCE & AGRICULTURE)

By Unanimous Board Resolution On April 3, 1989

The Cuero Chamber of Commerce & Agriculture files a request that the Texas Supreme Court hear the appeals case of Edgewood vs. Kirby. Cuero, located in DeWitt County, is primarily an agricultural area and has been limited in attracting large business concerns. One of the primary reasons DeWitt County has not been able to attract business for economic growth is due to the excessive tax rates of all DeWitt County schools. Large corporations will not locate in an area with high tax rates, when they can just as easily locate in an area that is a tax haven with low rates. In addition, corporations take into account the quality of education programs and facilities available to children of their employees prior to selecting a location for their business. DeWitt County also loses on this prerequisite for location, due to the fact that Cuero and other DeWitt County schools do not have access to the large amount of funds required to compete with schools located in high property wealth areas of Texas.

School districts and citizens of DeWitt County must have relief immediately. The Edgewood case is most important to the children of Texas. The children and citizens of Cuero only deserve equal and fair treatment in the provision of quality education and economic development.

We authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on our behalf, supporting Peititoners and Petitioner Intervenors in the Edgewood case.


Murray Tarkington
President of the Cuero Chamber of Commerce
& Agriculture

4-4-89
Date

STATEMENT OF AMICUS CURIAE (Joe D. Sanders)
Citizen's Name

I am a concerned citizen and taxpayer in the Cuero Independent School District of DeWitt County, Texas. As a citizen and taxpayer, I am alarmed to know of the inequities that exist across the state in educational programs due to the current system of school finance. I have paid school taxes in excess of \$1.00 per hundred dollars of property value for as long as I can remember in support of the local school district. Even with the high tax rate (currently \$1.01), our district is not able to provide adequate facilities, salaries, and support personnel to meet the needs of our students. We presently have: (1)an elementary gymnasium that can be utilized only in good weather conditions due to structural instability; (2)no available physical education facilities at another elementary campus; (3)roof replacement that will cost the district approximately \$350,000. this summer to prevent students and faculty exposure to asbestos containing material in facility ceilings; and, finally, (4)an estimated increase in costs for next year's budget of approximately \$300,000. due to state requirements of House Bill 72. Our district has managed well since House Bill 72. Costs have increased by about \$300,000. per year since 1984. We are currently in the 1988-89 school year and are receiving the same state aid we did in 1985-86. What can the State Supreme Court do? The very least you can do, when some school district

tax rates are as high as \$1.55 per hundred dollars of taxable value and other school district tax rates are less than .30¢ per hundred dollars of value, is hear the appeals case of Edgewood versus Kirby. Cuero is at the 20th percentile of taxable value per student, with a tax rate of \$1.01. With the low taxable value, the Cuero district cannot wait much longer for relief from the current inequities of school finance. The Supreme Court must act now to render a decision that will allow substantially equal educational opportunity for all students in the state of Texas.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf, supporting Petitioners and Petitioner Intervenors in the Edgewood case.


Signature

STATEMENT OF AMICUS CURIAE (W. Lamar Fly)
Citizen's Name

I am a concerned citizen and taxpayer in the Cuero Independent School District of DeWitt County, Texas. As a citizen and taxpayer, I am alarmed to know of the inequities that exist across the state in educational programs due to the current system of school finance. I have paid school taxes in excess of \$1.00 per hundred dollars of property value for as long as I can remember in support of the local school district. Even with the high tax rate (currently \$1.01), our district is not able to provide adequate facilities, salaries, and support personnel to meet the needs of our students. We presently have: (1)an elementary gymnasium that can be utilized only in good weather conditions due to structural instability; (2)no available physical education facilities at another elementary campus; (3)roof replacement that will cost the district approximately \$350,000. this summer to prevent students and faculty exposure to asbestos containing material in facility ceilings; and, finally, (4)an estimated increase in costs for next year's budget of approximately \$300,000. due to state requirements of House Bill 72. Our district has managed well since House Bill 72. Costs have increased by about \$300,000. per year since 1984. We are currently in the 1988-89 school year and are receiving the same state aid we did in 1985-86. What can the State Supreme Court do? The very least you can do, when some school district

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I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

W. Lamar Fly
Signature

STATEMENT OF AMICUS CURIAE (GAYLE SANDERS)
Citizen's Name

I am a concerned citizen and taxpayer in the Cuero Independent School District of DeWitt County, Texas. As a citizen and taxpayer, I am alarmed to know of the inequities that exist across the state in educational programs due to the current system of school finance. I have paid school taxes in excess of \$1.00 per hundred dollars of property value for as long as I can remember in support of the local school district. Even with the high tax rate (currently \$1.01), our district is not able to provide adequate facilities, salaries, and support personnel to meet the needs of our students. We presently have: (1)an elementary gymnasium that can be utilized only in good weather conditions due to structural instability; (2)no available physical education facilities at another elementary campus; (3)roof replacement that will cost the district approximately \$350,000. this summer to prevent students and faculty exposure to asbestos containing material in facility ceilings; and, finally, (4)an estimated increase in costs for next year's budget of approximately \$300,000. due to state requirements of House Bill 72. Our district has managed well since House Bill 72. Costs have increased by about \$300,000. per year since 1984. We are currently in the 1988-89 school year and are receiving the same state aid we did in 1985-86. What can the State Supreme Court do? The very least you can do, when some school district

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I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Gayle Sanders
Signature

March 30, 1989
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 19th day of June, 1989, by United States Mail, postage prepaid to all counsel of record.

Sandra R. Nicolas

Sandra R. Nicolas
State Bar Number 15016500

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RECEIVED
IN SUPREME COURT
OF TEXAS

C

8358

MOTION FOR REHEARING-CAUSE

OCT 9 1983

JOHN T. ADAMS, Clerk

By _____ Deputy

NO. C-8353

IN THE SUPREME COURT OF TEXAS

* * * * *

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL,

PETITIONERS,

V.

WILLIAM KIRBY, ET AL,

RESPONDENTS.

* * * * *

AMICUS CURIAE BRIEF

PAUL L. SADLER
STATE BAR NO. 17512400
P. O. BOX 1109
HENDERSON, TX 75653-1109
214/657-8544

NO. C-8353

IN THE SUPREME COURT OF TEXAS

* * * * *

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL,

PETITIONERS,

V.

WILLIAM KIRBY, ET AL,

RESPONDENTS.

* * * * *

AMICUS CURIAE BRIEF

PAUL L. SADLER
STATE BAR NO. 17512400
P. O. BOX 1109
HENDERSON, TX 75653-1109
214/657-8544

NO. C-8353

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL,

Petitioners,

V.

WILLIAM KIRBY, ET AL,

Respondents

SECRET

FROM TRAVIS COUNTY

THIRD DISTRICT

AMICUS CURIAE BRIEF

TO THE HONORABLE SUPREME COURT OF TEXAS:

STATEMENT

The undersigned submits the following Brief in anticipation of a Motion for Rehearing being filed by Respondents. In the event a Motion for Rehearing is not timely filed, then the undersigned respectfully submits this brief for the Court's consideration so that the people of this state may have a meaningful voice in the legislative decisions concerning the system for financing the education of public school children in Texas.

ARGUMENT

This Court, on October 2, 1989, by unanimous decision, rendered an Opinion which reaches every citizen and household of the State of Texas. This Brief is not submitted to urge the position of either of the parties to the litigation, but rather, solely concerns the stay of the injunction until May 1, 1990. The undersigned respectfully urges the Court to modify its Opinion concerning the stay of the injunction until May 1, 1990, to extend the stay until the end of the next regular legislative session.

While some individuals in the state may have contemplated the effect of this Court's ruling, the majority of the people who ultimately must pay for the system of educating our children should have the right to contemplate this decision and have a meaningful effect on the legislative process and, ultimately, the creation of the new public school financing system. Some public officials have indicated that there should be public hearings around the state; many editorials and officials speak of constitutional amendments or project additional costs ranging from 2 billion to 5 billion dollars; others claim new taxes will be required. Conjecture has already begun concerning the benefits to the Democratic or Republican candidates because of the time table imposed by the Court. (See editorial, Dallas Morning

News, by Scott Bennett, October 5, 1989.) The resolution of this problem is too important to be determined by partisan party politics. It is a decision that demands the public will and support, if it is to be successful.

This Court, in its Opinion, acknowledged "the enormity of the task now facing the legislature" and, it judiciously attempted to "avoid any sudden disruption in the educational process." However, requiring legislative action prior to May 1, 1990, invites a "quick fix" decision, rather than a well-informed, reasonable and logical decision concerning our children's educational future. The issue of school financing and the effect on each household is too great to be "sandwiched" between the primaries and the general election in November, 1990.

If a special session of the legislature is called between now and the end of the year, then education must be considered, along with workers' compensation reform. More importantly, the people of this state will not have had sufficient time to contemplate the "gross discrepancies" of the current system, fully understand this Court's decision, and grasp the complexity of a proposed system. If a special session of the legislature is called between January and March, 1990, it will be held in the middle of the primary campaign season. In March, 1990, 150 State Representatives, 16 State Senators, and numerous elections, state-wide, will be decided by the primary election.

Legislation which must be enacted during the middle of the campaign season does not provide the proper atmosphere or attention this very important decision deserves. Furthermore, if a special session of the legislature is called after the March, 1990 primary, then, in all likelihood, this important decision will be decided by "lame-duck" legislators and a Governor who will not be accountable to the very public which must pay for the system.

The future of our education system deserves the open debate and forum that only a general election can provide. Only through the election process will the candidates and future legislators and Governor be forced to answer and explain to the public, potential solutions to this problem. Only through the general election can the public indicate its desires concerning the future of our children and how the system will be funded. The people of this state are ready, willing and able to confront this problem. This Court should give them the opportunity to do so in a meaningful manner.

The undersigned is very aware of the Court's desire for immediate action. Likewise, the undersigned is sensitive to the apparent frustration and sense of urgency of the school districts which do not have the immediate benefit of the Court's ruling. However, the litigation addressing this problem has been ongoing for five years in the Court system. Surely, the citizens of this

state deserve the additional requested months to contemplate meaningful and effective decisions to ensure an "efficient" system of public education.

This Court justifiably recognized that, for too long, education has been relegated to an "if funds are left over" position. However, it is the concern of the undersigned that under the time frame imposed by the Court, and considering the events and elections scheduled to occur between now and May 1, 1990, that education will, once again, be relegated to a short-term solution rather than a long-term commitment to a quality and "suitable" education system.

By extending the stay of the effect of the injunction until after the next legislative session, the Court will further minimize the "sudden disruption in the education process." Many local school districts will begin planning their budgets in the spring of 1990. The legislature has already designated funds for education for the 1990-1991 school year. Therefore, school officials can continue their immediate plans based upon the legislature's prior actions. Traditionally, local school officials know and must expect changes in their budgets in years when the legislature meets. Furthermore, if a new system is adopted in May, 1990, it must necessarily be funded for only one year--until the next legislative session. Therefore, by extending the

effect of the injunction, the budgeting of the education process would be disrupted only once, rather than in May, 1990, and again in May, 1991.

This Court's opinion is clear, unequivocal, and many would argue, absolutely justified. While the legislature may have failed in the past to meet its obligations concerning education, the citizens of this state deserve the right to be heard in the election process. The public, which must ultimately pay for the education of our children, should have the right to elect legislators and a Governor to solve this problem. Only by the utilization of the election process, can meaningful and "long overdue" education reform be accomplished.

CONCLUSION

For the foregoing reasons, the undersigned respectfully requests that this Court modify its Order of October 2, 1989, staying the effect of the injunction until the close of the next legislative session in 1991.

Respectfully submitted,



PAUL L. SADLER
State Bar No. 17512400
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Amicus Brief has been deposited in the United States mail, this 6th day of October, 1989, as follows:

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C 8353

**RECEIVED
IN SUPREME COURT
OF TEXAS**

NO. C-8353

JUL 26 1989

IN THE SUPREME COURT OF TEXAS

JOHN T. ADAMS, Clerk

By _____ Deputy

**EDGEWOOD INDEPENDENT SCHOOL DISTRICT,
ET AL.,**

PETITIONERS

VS.

WILLIAM N. KIRBY, ET AL.,

RESPONDENTS

**AMICUS CURIAE BRIEF
IN SUPPORT OF RESPONDENTS**

**CLARK, THOMAS, WINTERS
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**ATTORNEYS FOR AMICUS CURIAE
TEXAS FARM BUREAU**

July, 1989

NO. C-8353

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT,
ET AL.,

PETITIONERS

VS.

WILLIAM N. KIRBY, ET AL.,

RESPONDENTS

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July, 1989

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NO. C-8353

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT,
ET AL.,

PETITIONERS

VS.

WILLIAM N. KIRBY, ET AL.,

RESPONDENTS

AMICUS CURIAE BRIEF
IN SUPPORT OF RESPONDENTS

TO THE HONORABLE SUPREME COURT OF TEXAS:

The following amicus curiae brief in support of Respondents is respectfully submitted by the Texas Farm Bureau, a voluntary organization with 326,167 member families and with affiliated county organizations in 216 Texas counties. Although individual members of Texas Farm Bureau member families reside in, attend public school in, and teach and administer in "poor" school districts and "rich" ones alike, the Farm Bureau organization and its member families are fully united in adherence to the constitutional form of government on which the governments of this state and nation are based.

Texas Farm Bureau members want a good system of public education, but cannot accept the premise that the end justifies the use of constitutionally impermissible means. The trial court decision, which

Petitioners seek to reinstate, is a blatant attempt to usurp legislative power and to deprive the citizens of this state of their right to be represented in a republican form of government by their own elected state officials.

In Kirby v. Edgewood Independent School District, 761 S.W.2d 859 (Tex. App. - Austin 1988, writ granted), the court recognized the fundamental errors in the judgment of the trial court, decided the case on the basis of precedent and long-standing rules of construction and reversed the unsupported and unsupportable judgment of the trial court. Petitioners have substantially ignored the decision of the intermediate court and urged this Court to focus on two isolated constitutional provisions and a mass of factual statistics which they perceive as showing that an entire chapter of the Texas Education Code is "unconstitutional and unenforceable." Insofar as state law is concerned, their approach to constitutional law is unique. Unless applicability to a particular person or class is in question, facts have no significance in a constitutional law case. In those instances, if the court finds unconstitutionality in application, the decision is limited to those affected and the statute is held valid as to others. Moreover, as a general rule no statute is held to be unconstitutional unless expressly prohibited by some specific constitutional provision. The State Constitution operates as a limitation on power.

Petitioners ignore these rules and instead take the position that the manner in which the Legislature has exercised the power and duty conferred upon it by Article VII, Section 1, falls short of meeting the

requirements of Article I, Section 3. The Texas Farm Bureau, therefore, requests consideration of the following brief in the belief that this Court will adhere to the "preservation of the republican form of government", to which the "faith of the people of Texas stands pledged" by Article I, Section 2, and that it will enforce the separation of powers mandated by Article II, Section 1, of the Constitution of this state.

BACKGROUND

The pending case is in essence a re-run of San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). That case attacking the Texas system of financing public education was instituted by parents whose children attended the elementary and secondary schools in the Edgewood Independent School District, the same district which was the plaintiff in the pending case. The attack was based on evidence substantially comparable with that in the case at bar. The earlier suit, however, was brought in the Federal District Court in reliance on the Equal Protection Clause of the Fourteenth Amendment. A three-judge district court ruled in favor of the plaintiffs, but the United States Supreme Court reversed, holding that there was no violation of the Equal Protection Clause and that the ultimate solution to the problem must come from the lawmakers and from the democratic participation of those who elect them. In reaching its decision the Supreme Court found that the "poor" do not constitute a suspect class and that education is not a fundamental right in the sense that it is among the rights and liberties protected by the Federal Constitution.

Petitioners, as plaintiffs in the pending case, were well aware of the earlier decision and from the outset of the litigation sought to create a distinction or distinctions which would avoid the controlling effect of the decision of the United States Supreme Court.

The trial court adopted the plaintiff-Petitioners' position, holding that education is a fundamental right under the Texas Constitution and that the disparity in funds available for public education between poor school districts and rich school districts violated the equal rights guarantee in the Texas Constitution.

The Austin Court of Appeals analyzed the trial court judgment, found that its basic holdings are unsupportable, reversed the trial court judgment and rendered judgment for the defendants. Petitioners have virtually ignored the intermediate court decision and instead have emphasized facts on the basis of which they present virtually the same emotional argument with which they persuaded the district court. This Court, however, as a court of law, is obligated to enforce all pertinent provisions in the Texas Constitution as well as the Federal Constitution and is bound by the inevitable fact that its decisions will constitute controlling precedent in all of the courts of this state. Respect for its own decisions as followed by the Court of Appeals might alone be sufficient basis for this Court to affirm the intermediate court decision.

THE FUNDAMENTAL RIGHT CONTENTION

To adopt Petitioners' contentions here, this Court would first have to agree with the trial court that education is a fundamental right. Petitioners' position is that the mere fact that education is mentioned in

the Texas Constitution raises public education to a "fundamental right." The argument is totally unacceptable. As the Court of Appeals pointed out (761 S.W.2d 862), the Texas Constitution addresses a great number of subjects, the large majority of which are not fundamental rights. Relying on this Court's decisions, the intermediate court further held that (761 S.W.2d 863):

"In discussing the narrow, technical meaning, the Supreme Court of Texas has plainly stated that 'fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions' such as the right to free speech or free exercise of religion. Spring Branch I.S.D. v. Stamos, 695 S.W.2d at 559 (Emphasis added [by the Court]). The term 'fundamental right' refers to a limitation upon the exercise of governmental power; it does not imply an affirmative obligation upon government to insure that all persons have the financial resources available to exercise their liberty or fundamental rights. The issue is one of personal liberty, a broad term, but one that necessarily contemplates that some things must fall outside the scope of 'fundamental rights.' See Board of Regents v. Roth, 408 U.S. 564, 570-573, 92 S.Ct. 2701, 2705-2707, 33 L.Ed.2d 548 (1972). In the present appeal, there is no suggestion of unwarranted governmental interference with any person's 'liberty,' of whatever kind, such as the freedom to travel, to choose an occupation, to make family decisions (whether to marry or whether to have children), to worship God as one sees fit, 'and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men.'..." (Emphasis added [by the Court])

After repeating a citation to a United States Supreme Court case, the court continued (761 S.W.2d 863):

"This court concludes that education, although vital, does not rise to the same level as the right to engage in freedom of speech or to exercise religion free of governmental interference, both rights which have long been recognized as fundamental and entitled to protection under both the federal and state constitutions."

Obviously this Court would necessarily be required to abandon or reverse its prior concepts of fundamental rights in order to accept

Petitioners' contentions here. Moreover, the consequences of such action could not be restricted to this single case, since the decision here will be precedent. Is there not a need for limitations on "fundamental rights"? How far should this Court go in directing action traditionally - and constitutionally - delegated to the Legislature?

THE REAL MEANING OF ARTICLE VII, SECTION 1

Petitioners do not contend that the Legislature has made no provision for public education - they could not do so. Their contention is that the system provided is not "efficient" as required by the constitutional provision. The exact language used is important. Article VII, Section 1 reads:

"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

Unquestionably that provision imposes a duty on the Legislature. No other provision in the Constitution grants or even implies any right in the courts to supervise the manner in which the Legislature carries out its obligations. Article VII, Section 1 is, therefore, clearly subject to Article II, Section 1, wherein the Constitution of this state expressly declares that:

"The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, towit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."